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8	BEFORE THE
	BOARD OF REGISTERED NURSING
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 2013 -919
12	KENNETH G. SMITH, JR. 15511 Marty Avenue
13	Bakersfield, CA 93314 A C C U S A T I O N
14	Registered Nurse License No. 452102
15	Respondent.
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17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20	official capacity as the Executive Officer of the Board of Registered Nursing, Department of
. 21	Consumer Affairs.
22	2. On or about March 31, 1990, the Board of Registered Nursing issued Registered
23	Nurse License Number 452102 to Kenneth G. Smith, Jr. ("Respondent"). Respondent's registered
24	nurse license was in full force and effect at all times relevant to the charges brought herein and
25	will expire on January 31, 2014, unless renewed.
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Accusation

**JURISDICTION** 

- 3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY AND REGULATORY PROVISIONS

6. Code section 2761 states, in pertinent part, as follows:

The Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .
- 7. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

# COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

#### CAUSE FOR DISCIPLINE

### (Gross Negligence)

- 9. At all times herein mentioned, Respondent was employed as a registered nurse in the Emergency Department at Emanuel Medical Center ("EMC") located in Turlock, California.
- 10. On or about October 8, 2010, Respondent "clocked in" at EMC at approximately 1444 hours. Respondent was scheduled to work the mid-shift from 1500 hours (on October 8, 2010) to 0300 hours on October 9, 2010, and was assigned to take over registered nurse A.F.'s patients. At approximately 1700 hours, Respondent informed his nursing supervisor that he was quitting and left the facility, without giving a report to another nurse regarding his assigned patients.
- 11. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about October 8, 2010, Respondent was guilty of gross negligence within the meaning of Regulation 1442, as follows: Respondent abandoned his assigned patients by leaving the Emergency Department without giving adequate report to another nurse, and without providing reasonable notice to his nursing supervisor, or other appropriate staff member, so that arrangements could be made for continuity of care of his assigned patients, thereby inappropriately severing the nurse-patient relationship.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 452102, issued to Kenneth G. Smith, Jr.;
- 2. Ordering Kenneth G. Smith, Jr. to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

Taking such other and further action as deemed necessary and proper. 3. SE R. BAILEY, M.ED., RN Board of Registered Nursing Department of Consumer Affairs State of California Complainant 2,5 LA2012507892